IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 157 of 2007
In
COMPANY PETITION No. 205 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

==========

USHABEN.K.SURTI - Applicant(s)
Versus
STATE OF GUJARAT THRO' THE SECRETARY & 4 - Respondent(s)

==========

Appearance :
MR MEHUL M MEHTA for Applicant(s) : 1,
None for Respondent(s) : 1,3 - 5.
OFFICIAL LIQUIDATOR for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 27/04/2007

ORAL JUDGMENT

Present Judges' Summons has been taken out

by the applicant as legal heir and representative of deceased Lalubhai Mulchandbhai who was alleged to be working in Sarangpur Cotton Mgf. Company in liquidation, Unit No.2., Ahmedabad for an appropriate order directing the respondents more particularly official liquidator of Gujarat State Textile Corporation (in liquidation) to pay Rs. 1,24,000/- (Rupees One lac Twenty Four Thousand only) to the applicant as per the orders dated 29.11.1991 and 08.05.1998 passed by the Labour Court, Ahmedabad in Recovery Application No. 1308 of 1990.

2. Before deciding present application this Court called for Record and proceedings of Recovery Application No.1308 of 1990 from the Labour Court, Ahmedabad initially to ascertain how the Official Liquidator was joined as party respondent to the Recovery Application and whether anybody on behalf of Official Liquidator appeared or not. On going through Record and Proceedings, it appears that initially in the Recovery Application No. 1308 of 1990, Sanrangpur Mfg. Ltd., one Nandkishore Sakarlal and Mrugesh JaiKrish were joined as party to the said proceedings and by order dated 29.11.1991, the Labour Court allowed the said Recovery Application and directed

the Sanrangpur Company Limited Unit No.2, Shri Nandkishore Sakarlal and Mrugesh Jai Kishen to pay jointly to the applicant Rs. 1,24,000/- (Rupees One lac Twenty Four thousand only). Thus as such Recovery Application No. 1308 of 1990 came to be disposed of. It appears from the record of Recovery Application No. 1308 of 1990 that subsequently and in spite of the fact that Recovery Application No. 1308/1990 was already allowed and disposed of, technically Recovery Application No.1308/1980 cannot be said to be pending, in the said application, an application was given below Exh. 16 by the original- opponent no.3 for deleting his name from the proceedings and by order dated 20.10.1994, the Labour Court, Ahmedabad passed an order to delete name of Shri Nankishore Sakarlal – original opponent no.3 and further passed an order to proceed further against original opponent Nos. 1,2 and 4. It appears from the record that one *pursis* was given by the learned Advocate appearing on behalf of the opponents–Sarangpur Cotton Mfg. Ltd.-Company on 27.08.1997 submitting that as Gujarat State Textile Corporation Limited is ordered to be wound up and Official Liquidator is appointed, he may be permitted to retire. It appears that learned Advocate was permitted to retire. Without any

application for joining Official liquidator as party respondent and without even joining Official Liquidator as party to the said proceedings, notice was sent to the Sarangpur Cotton Mfg. Company Limited Unit of G.S.T.C. informing that the learned Advocate has retired and it appears that said copy was send to the Official Liquidator. It appears that on receipt of said notice, Official Liquidator by communication dated 28.10.1997 informed that as winding up order is already passed before proceeding further with the said application permission under Section 446(1) of the Companies Act, 1956 (“the Act” for short) is required to be obtained and further it was pointed out that in view of the provisions of Section 446(1) of the Act, the applicant may be directed to file her claim, if any, with the Official Liquidator or they may be directed to obtain necessary leave of the High Court before the application is proceeded with. In spite of the above no leave was sought as required under Section 446(1) of the Act and it is also not known how the second order dated 08.05.1998 came to be passed in Recovery Application No. 1308 of 1990. Learned Advocate appearing on behalf of the applicant is not in a position to satisfy this Court with regard to necessity to pass another order dated

08.05.1998 in Recovery Application No. 1308 of 1990 when in the year 1991 itself the Recovery Application has already been decided and disposed of. Even otherwise it is admitted position that before proceeding further with Recovery Application No. 1308 of 1990 no permission was sought of this Court as required under Section 446(1) of the Act. Thus, any order in breach of section 446 of the Act is nullity. Under the circumstances, on the basis of order dated 08.05.1998 passed in Recovery Application No. 1308 of 1990, no order can be passed against Official Liquidator, as such the same is nullity. Thus as such there is no order against the Official Liquidator, therefore, prayer of the petitioner sought in the present application cannot be granted.

3. Hence, this application is dismissed. However, it is observed that independently the applicant may lodge her claim before the Official Liquidator and as and when such a claim is lodged, the same shall be considered in accordance with law and on merits. With these, present application is dismissed.

[M.R.Shah, J.]

satish